

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Morris A. Sullivan,)	
)	C/A No.: 9:06-0027-MBS
Plaintiff,)	
)	
vs.)	
)	
Deputy Chief Attorney Joseph L. Savitz,)	O R D E R
III; and Assistant Appellate Defender)	
Eleanor Duffy Cleary,)	
)	
Defendants.)	
)	

Plaintiff Morris A. Sullivan is currently housed at Greenville County Detention Center in Greenville, South Carolina. Plaintiff, appearing pro se, alleges he was denied effective assistance of counsel and that his attorneys acted unprofessionally. According to Plaintiff, counsel’s conduct “caused [him] four more years of incarceration[.]” Complaint, p. 5. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, seeking damages in the amount of \$1,000,000.00.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge George C. Kosko for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act of 1996. On January 12, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be dismissed because (1) the court lacks subject matter jurisdiction under 28 U.S.C. § 1332; (2) Defendants are not state actors for purposes of 42 U.S.C. § 1983; and (3) the complaint sounds in negligence, which is not cognizable under § 1983. Accordingly, the Magistrate Judge recommended that the action be dismissed without prejudice and without issuance and service of process. Plaintiff filed no response to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has

no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The case is dismissed without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

February 8, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.